IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

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PRESENT

THE HON'BLE Mr. JUSTICEM.H.S. ANSARI

and
THE HON'BLE Mr. JUSTICE T.CH.SURYA RAO

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WRIT PETITION Nos. 15252 &16809 OF 2004.

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WRIT PETITION No.15252 OF 2004.

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Between:

M/s.Amar Textiles situated at 310/A, Kallakal Village,
Toopran Mandal, Medak District rep., by its Proprietor Mohd.Yousuf Khan, s/o late Mohd.Khaja Khan, aged about 33 years

..... PETITIONER

AND

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1. The Union of India, rep., by its Under Secretary,
Department of Commerce and Industries, Ministry of Commerce & Industries, New Delhi.
2. The Development Commissioner, Visakhapatnam, Special Economic Zone, Duvvada, Visakhapatnam-46.
3. The Asstistant Commissioner, Customs and Central Excise,
Posnett Bhavan, Ramkoti, Hyderabad.

(R3 is impleaded as per Court Order dated 26-08-2004 in WPMP 19820/2004)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents herein in issuing proceedings

C.No.VIII/20/16/2003 EOU dt.19-08-2004 by relying on an internal communication in 8/EOU/Misc./2004/1426 dt.12-04-2004 by treating the letter of permission granted to the petitioner herein as per para 9.5 of Chapter 9 of the Hand Book of Procedures in respect of Export and Import policy as lapsed as illegal, arbitrary, unreasonable, violative of Articles 14, 19(1)(g) of Constitution of India and consequently set aside the proceedings No.VIII/20/16/2003 dt.19-08-2004.

Counsel for the Petitioner: Smt. K.BINDU

Counsel for Respondents: MR.ARAJASHEKAR REDDY (SC FOR CG)

WRIT PETITION NO : 16809 of 2004

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Between:

M/s.Amar Textiles, Situated at 310/A, Kallakal village,
Toopran Mandal, Medak District.

..... PETITIONER

AND

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1. The Union of India, rep. by its under Secretary, Dept., of Commerce and Industries, Ministry of Commerce & Industries, New Delhi.
2. The Development Commissioner, Viskhakhapatnam, Special Economic Zone, Duvvada, Vishakhapatnam-46.
3. The Assistant Commissioner, Customs & Central Excise, Posnett Bhavan, Ramkoti, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd and 3rd Respondents in issuing the Lr.No.8/EOU/Misc./2004/1426 dt.12-04-2004 and C.No.VIII/20/20/2001-EOU dt.14-09-2004 respectively as arbitrary, illegal and violative of Articles 14, 19 and 21 of the Constitution of India, and, consequently quash the impugned proceedings.

Counsel for the Petitioner: Mr. D.JAGAN MOHAN REDDY

Counsel for Respondents: MR.ARAJASHEKAR REDDY (SC FOR CG)

The Court made the following :

COMMON ORDER: (per Hon'ble Sri Justice M.H.S.Ansari)

Both the above writ petitions were heard analogously and are being disposed of by this common order.

After having heard the learned counsel for the respective parties, and with their assistance, we have also perused the relevant pleadings and documents on record, and in the view that we have taken in the matter, only certain relevant facts and contentions need to be stated for the disposal of the matters on hand.

The facts, briefly stated, are that the petitioner unit was granted the facilities and privileges admissible and subject to the provisions of the export oriented scheme as envisaged in Export-Import Policy 1997-2002 for establishment of a new undertaking for manufacture of the specified items up to the capacities specified in the letter issued to the petitioner by the Govt. of India, Ministry of Commerce, dated 20-10-2000. The conditions subject to which such permission was granted have been specified in the said letter. In Clause 3 of the letter of permission (LOP), it is stipulated that the permission is valid for three years from its date of issue within which the petitioner should implement the project and commence production and "would automatically lapse if an application for extension of validity is not made before the end of the said period. As soon as commercial production starts, intimation to this effect should be sent to the Development Commissioner, VEPZ and Administrative Ministry/ Departments concerned under intimation of Ministry of Commerce (EP Section)." The petitioner, by a letter dated 19-8-2004 addressed to the Assistant Commissioner of Customs & Central Excise applied for issue of pre-authenticated CT3 Book of 50 leaves so as to enable the petitioner to place orders on suppliers. In reply, the petitioner was informed by the impugned letter dated 19-8-2004 that as the petitioner has not declared commencement of commercial production, the petitioner's letter of permission dated 20-10-2000 lapsed on 19-10-2003 and, therefore, the petitioner was requested to get extension of LOP (letter of permission) from Deputy Commissioner of Customs & Central Excise, Vizag. It is the validity of these proceedings that is questioned in W.P.No.15252 of 2004.

By an order dated 26-8-2004 in WPMP.No.19758 of 2004 in W.P.No.15252 of 2004, a learned single Judge of this Court, while directing notice, also directed the Assistant Commissioner of Central Excise to re-consider the request of the petitioner for procurement of raw material. This was on the premise that the petitioner's name was not to be found in the letter dated 12-4-2004, relied upon by respondent No.3 for the view that the LOP issued to the petitioner lapsed on 19-10-2003.

In compliance thereof, learned Assistant Commissioner re-considered the matter

and by his proceedings dated 14-9-2004 (being the impugned order in W.P.No.16809 of 2004) stated that at Sl.No.2 of the statement enclosed to the aforesaid letter dated 12-4-2004 the status of the petitioner's unit was shown as "the unit has not declared commercial production to D.C., VSEZ. LOP expired by 19-10-2003." Therefore, once again, by the impugned order dated 14-9-2004, the request of the petitioner for issue of CT3/procurement certificate was refused on the ground of expiry of LOP. In view of this, W.P.No.15252 of 2004 is rendered of academic interest. The proceedings dated 14-9-2004 have been assailed in W.P.No.16809 of 2004.

The short question for consideration in the instant writ petition being W.P.No.16809 of 2004 is as to whether the petitioner can be denied CT3 Book/procurement certificate on the aforesaid ground namely that the LOP expired on 19-10-2003.

Though several contentions have been raised in support of the reliefs prayed for assailing the said letter dated 14-9-2004 as also the order, based upon which the same is founded, we are of the view that if the LOP dated 20-10-2000 (Annexure A to W.P.No.16809 of 2004) has lapsed, the question of issuing CT3/procurement certificate does not arise.

Learned counsel for the petitioner, however, strenuously urged that the decision taken by the respondent authorities holding that the LOP expired by 19-10-2003, is a decision taken in utter violation of principles of natural justice. The petitioner was neither informed of any such proposed action nor was any opportunity of hearing afforded to the petitioner before arriving at any such conclusion by the Development Commissioner, VSEZ, Visakhapatnam, vide his letter dated 12-4-2004. In other words, the short point for consideration is whether the decision of the Development Commissioner holding that the petitioner's unit has not declared commercial production within the stipulated period of three years and consequently LOP expired by 19-10-2003 can be sustained?

From the impugned proceedings dated 14-9-2004 (page 61 of the material papers in W.P.No.16809 of 2000), it will be seen that the Assistant Commissioner has merely relied upon the letter being a communication of the Development Commissioner, VSEZ, Visakhapatnam, dated 12-4-2004 addressed to the Under Secretary, Department of Commerce, Ministry of Commerce & Industry, New Delhi forwarding therewith a statement wherein the present status of 16 Nos. of EOUs was detailed.

Learned Assistant Commissioner has noticed that at Sl.No.2 of the said statement, the petitioner's name is indicated and there is a statement in the column of status which *inter alia* states, "the unit has not declared commercial production to DC/VSEZ. LOP expired by 19-10-2003." The validity of this statement in the letter of the Development Commissioner (second respondent) dated 12-4-2004 is also questioned in the present writ petition.

A perusal of the impugned letter/order of second respondent dated 12-4-2004 shows that a personal inspection of the unit was made and certain irregularities were noticed. It would appear from the material on record that show cause notices were issued by the Development Commissioner, one of such notice being show cause notice dated 1-11-2002 calling upon the petitioner to show cause as to why the LOP issued to them should not be cancelled for falsely representing their project as a new establishment and seeking approval under EOU scheme. Another show cause notice dated 9-1-2003 was issued with respect to confiscation of certain goods and for imposition of penalty. It does not appear from the material on record that any enquiry was held or even a show cause notice was issued to the petitioner by second respondent - Development Commissioner, VSEZ, Visakhapatnam, before recording a finding that the LOP expired on 19-10-2003. Sri Prakash Reddy, learned Senior Counsel, representing Sri D.Jaganmohan Reddy, learned counsel for the petitioner, therefore, contended that the conclusion arrived at by the learned Development Commissioner, VSEZ as regards the expiry of LOP is one in utter violation of principles of natural justice. It was submitted by Sri Prakash Reddy that no specific order itself has been passed by the learned Development Commissioner, but certain communication as to the status of 16 units has been sent to the Ministry based upon certain enquiries conducted behind the back of the petitioner. The same, it was submitted, cannot form the basis for the impugned order dated 14-9-2004 by the Assistant Commissioner in denying the benefit of the CT3/procurement certificate. We find sufficient force in the aforesaid contentions of Sri Prakash Reddy, learned Senior Counsel.

We are not concerned in these proceedings with respect to the enquiry pursuant to the show cause notices issued by the Development Commissioner, VSEZ. Suffice it to state here that the respondents have not placed before us any record based on which it can be said that the conclusion arrived at by the

Development Commissioner as regards the lapsing of LOP is founded on any enquiry conducted by the Development Commissioner or preceded by any show cause notice issued to the petitioner. Even no order of the Development Commissioner holding that the LOP expired has been placed before us. Learned Assistant Commissioner, in his impugned proceedings dated 14-9-2004, has merely relied upon a communication sent by the learned Development Commissioner to the Under Secretary, Department of Commerce. The said communication is Annexure U at page 62 of the material papers and the statement annexed thereto does show that the petitioner's name is at Sl.No.2 of the statement. It (Annexure U) appears to be a status report based upon certain investigations and reference is also made therein to the proceedings pending in this Court against the detention of goods. There is, however, the statement in that connection that the petitioner unit has not declared commercial production and LOP expired on 19-10-2003. Therefore, it is apparent that the impugned letter dated 14-9-2004 is based upon a statement made in a communication, which in turn, is founded upon certain investigations made behind the back of the petitioner and without affording any opportunity of hearing to the petitioner as regards the lapse of LOP for non-declaration of commercial production. No reliance could have been placed by third respondent upon the said communication dated 12-4-2004 of second respondent as the same is merely a status report. Mr. Rajasekhar Reddy, learned Senior Standing Counsel for Central Government, appearing on behalf of the respondents sought to controvert the above contentions by submitting that in terms of the LOP, the petitioner is required to declare commercial production and on failing to do so, the LOP would automatically lapse unless extension is obtained by the petitioner. It was further submitted that it is for the petitioner to establish in these proceedings that such a declaration was, in fact, made.

If the petitioner is to be denied CT3 Book on the sole ground that LOP is lapsed, then it is for second respondent to record a finding to that effect by an order to be passed by him adopting a fair procedure and in consonance with principles of natural justice. Being a question of fact as to whether any declaration was in fact made by the petitioner and whether the petitioner commenced commercial production to the knowledge of the Excise authorities are matters which can appropriately be adjudicated by second respondent. As there is no such finding or conclusion arrived at by second respondent, we are inclined to set aside, on the

short ground, the impugned order dated 14-9-2004 passed by third respondent. This exercise shall be completed expeditiously, and preferably within a period of three months from the date of hereof.

We, therefore, partly allow the instant writ petition with a direction upon respondent No.2 to consider the question with regard to lapsing of permission (LOP) after following a fair procedure of affording the petitioner an opportunity of being heard in the matter. Development Commissioner–respondent No.2 shall accordingly issue a show cause notice within a period of three weeks from the date hereof, affording the petitioner an opportunity of not less than 15 days to submit its reply and to place all material evidence upon which the petitioner may wish to rely and, thereafter, to pass such orders as may be deemed just and necessary.

As already noticed, the question of issuing CT3/procurement certificate is dependent upon the finding to be arrived at by the competent authority with regard to the subsistence of LOP or the expiry of LOP, as the case may be. The same shall, accordingly, be considered by third respondent depending upon the final orders that may be passed by second respondent.

In the result, Writ Petition No.16809 of 2004 is partly allowed with directions, as under:

1. Respondent No.2 shall consider the question as to the lapse of the LOP after affording the petitioner an opportunity of being heard, as directed above, and thereafter, to pass appropriate orders in accordance with law.

2. Until such time as final orders are passed, the impugned order namely, letter No.8/EOU/Misc./2004/1426, dated 12-4-2004 issued by second respondent insofar as it pertains to the expiry of LOP is concerned, shall remain in abeyance.

3. The impugned order in letter C.No.VIII/20/20/2001-EOU, dated 14-9-2004 passed by third respondent is hereby set aside with a direction to re-consider the matter after final orders are passed by the Development Commissioner, second respondent herein, and depending upon the result thereof.

W.P.No.15252 of 2004 is hereby closed as no orders or any further orders are required to be passed therein. In the facts and circumstances of this case,

there shall be no order as to costs.

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(M.H.S.ANSARI, J.)

2nd February 2005.

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(T.Ch.SURYA RAO, J.)

ARS

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Wednesday the second day of February, Two Thousand and Five.

Asst. Registrar.

To

1. The Under Secretary to Government of India, Department of Commerce and Industries, Ministry of Commerce & Industries, New Delhi.
2. The Development Commissioner, Viskhakhapatnam, Special Economic Zone, Duvvada, Vishakhapatnam-46.
3. The Assistant Commissioner, Customs & Central Excise, Posnett Bhavan, Ramkoti, Hyderabad.

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